

109TH CONGRESS
1ST SESSION

S. 654

To prohibit the expulsion, return, or extradition of persons by the United States to countries engaging in torture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2005

Mr. LEAHY (for himself, Mr. DURBIN, Mr. KENNEDY, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To prohibit the expulsion, return, or extradition of persons by the United States to countries engaging in torture, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Convention Against
5 Torture Implementation Act of 2005”.

6 **SEC. 2. PROHIBITION ON CERTAIN TRANSFERS OF PER-**
7 **SONS.**

8 (a) PROHIBITION.—No person in the custody or con-
9 trol of a department, agency, or official of the United

1 States Government, or of any contractor of any such de-
2 partment or agency, shall be expelled, returned, or extra-
3 dited to another country, whether directly or indirectly,
4 if—

5 (1) the country is included on the most recent
6 list submitted to Congress by the Secretary of State
7 under section 3; or

8 (2) there are otherwise substantial grounds for
9 believing that the person would be in danger of
10 being subjected to torture.

11 (b) EXCEPTIONS.—

12 (1) WAIVERS.—

13 (A) AUTHORITY.—The Secretary of State
14 may waive the prohibition in subsection (a)(1)
15 with respect to a country if the Secretary cer-
16 tifies to the appropriate congressional commit-
17 tees that—

18 (i) the acts of torture that were the
19 basis for including that country on the list
20 have ended; and

21 (ii) there is in place a mechanism that
22 assures the Secretary in a verifiable man-
23 ner that a person expelled, returned, or ex-
24 tradited to that country will not be tor-
25 tured in that country, including, at a min-

imum, immediate, unfettered, and continuing access, from the point of return, to such person by an independent humanitarian organization.

(B) REPORTS ON WAIVERS.—

(i) REPORTS REQUIRED.—For each person expelled, returned, or extradited under a waiver provided under subparagraph (A), the head of the appropriate government agency making such transfer shall submit to the appropriate congressional committees a report that includes the name and nationality of the person transferred, the date of transfer, the reason for such transfer, and the name of the receiving country.

(ii) FORM.—Each report under this subparagraph shall be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States.

(2) EXTRADITION OR REMOVAL.—The prohibition in subsection (a)(1) may not be construed to apply to the legal extradition of a person under a bi-

1 lateral or multilateral extradition treaty or to the
2 legal removal of a person under the immigration
3 laws of the United States if, before such extradition
4 or removal, the person has recourse to a United
5 States court of competent jurisdiction to challenge
6 such extradition or removal on the basis that there
7 are substantial grounds for believing that the person
8 would be in danger of being subjected to torture in
9 the receiving country.

10 (c) ASSURANCES INSUFFICIENT.—Written or verbal
11 assurances made to the United States by the government
12 of a country that persons in its custody or control will
13 not be tortured are not sufficient for believing that a per-
14 son is not in danger of being subjected to torture for pur-
15 poses of subsections (a)(2) and (b)(2), or for meeting the
16 requirement of subsection (b)(1)(A)(ii).

17 **SEC. 3. REPORTS ON COUNTRIES USING TORTURE.**

18 Not later than 30 days after the effective date of this
19 Act, and annually thereafter, the Secretary of State shall
20 submit to the appropriate congressional committees a re-
21 port listing each country where torture is known to be
22 used. The list shall be compiled on the basis of the infor-
23 mation contained in the most recent annual report of the
24 Secretary of State submitted to the Speaker of the House
25 of Representatives and the Committee on Foreign Rela-

1 tions of the Senate under section 116(d) of the Foreign
2 Assistance Act of 1961 (22 U.S.C. 2151n(d)).

3 **SEC. 4. REGULATIONS.**

4 (a) INTERIM REGULATIONS.—Not later than 60 days
5 after the effective date of this Act, the heads of the appro-
6 priate government agencies shall prescribe interim regula-
7 tions for the purpose of carrying out this Act and imple-
8 menting the obligations of the United States under Article
9 3 of the Convention Against Torture, subject to any res-
10 ervations, understandings, declarations, and provisos con-
11 tained in the Senate resolution advising and consenting
12 to the ratification of the Convention Against Torture, and
13 consistent with the provisions of this Act.

14 (b) FINAL REGULATIONS.—Not later than 180 days
15 after interim regulations are prescribed under subsection
16 (a), and following a period of notice and opportunity for
17 public comment, the heads of the appropriate government
18 agencies shall prescribe final regulations for the purposes
19 described in subsection (a).

20 **SEC. 5. SAVINGS CLAUSE.**

21 Nothing in this Act shall be construed to eliminate,
22 limit, or constrain in any way the obligations of the United
23 States or the rights of any individual under the Conven-
24 tion Against Torture or any other applicable law.

1 **SEC. 6. REPEAL OF SUPERSEDED AUTHORITY.**

2 Section 2242 of the Foreign Affairs Reform and Re-
3 structuring Act of 1998 (Public Law 105–277; 8 U.S.C.
4 1231 note) is repealed. Regulations promulgated under
5 such section that are in effect on the date this Act becomes
6 effective shall remain in effect until the heads of the ap-
7 propriate government agencies issue interim regulations
8 under section 4(a).

9 **SEC. 7. DEFINITIONS.**

10 (a) **DEFINED TERMS.**—In this Act:

11 (1) **APPROPRIATE GOVERNMENT AGENCIES.**—

12 The term “appropriate government agencies”
13 means—

14 (A) the intelligence community (as defined
15 in section 3(4) of the National Security Act of
16 1947 (50 U.S.C. 401a(4))); and

17 (B) elements of the Department of State,
18 the Department of Defense, the Department of
19 Homeland Security, the Department of Justice,
20 the United States Secret Service, the United
21 States Marshals Service, and any other Federal
22 law enforcement, national security, intelligence,
23 or homeland security agency that takes or as-
24 sumes custody or control of persons or trans-
25 ports persons in its custody or control outside
26 the United States, other than those elements

1 listed or designated as elements of the intel-
2 ligence community under section 3(4) of the
3 National Security Act of 1947 (50 U.S.C.
4 401a(4))).

5 (2) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means—

8 (A) the Committees on Armed Services,
9 Homeland Security and Government Affairs,
10 Judiciary, Foreign Relations, and the Select
11 Committee on Intelligence of the Senate; and

12 (B) the Committees on Armed Services,
13 Homeland Security, Judiciary, International
14 Relations, and the Permanent Select Committee
15 on Intelligence of the House of Representatives.

16 (3) CONVENTION AGAINST TORTURE.—The
17 term “Convention Against Torture” means the
18 United Nations Convention Against Torture and
19 Other Cruel, Inhuman or Degrading Treatment or
20 Punishment, done at New York on December 10,
21 1984, entered into force on June 26, 1987, signed
22 by the United States on April 18, 1988, and ratified
23 by the United States on October 21, 1994 (T. Doc.
24 100–20).

1 (4) EXPELLED PERSON.—A person who is ex-
2 pelled is a person who is involuntarily transferred
3 from the territory of any country, or a port of entry
4 thereto, to the territory of another country, or a port
5 of entry thereto.

6 (5) EXTRADITED PERSON.—A person who is ex-
7 tradited is an accused person who, in accordance
8 with chapter 209 of title 18, United States Code, is
9 surrendered or delivered to another country with ju-
10 risdiction to try and punish the person.

11 (6) RETURNED PERSON.—A person who is re-
12 turned is a person who is transferred from the terri-
13 tory of any country, or a port of entry thereto, to
14 the territory of another country of which the person
15 is a national or where the person has previously re-
16 sided, or a port of entry thereto.

17 (b) SAME TERMS AS IN THE CONVENTION AGAINST
18 TORTURE.—Except as otherwise provided, the terms used
19 in this Act have the meanings given those terms in the
20 Convention Against Torture, subject to any reservations,
21 understandings, declarations, and provisos contained in
22 the Senate resolution advising and consenting to the ratifi-
23 cation of the Convention Against Torture.

1 **SEC. 8. EFFECTIVE DATE.**

2 This Act shall take effect on the date that is 30 days
3 after the date of the enactment of this Act.

4 **SEC. 9. CLASSIFICATION IN UNITED STATES CODE.**

5 This Act shall be classified to the United States Code
6 as a new chapter of title 50, United States Code.

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